IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 8TH DAY OF NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/91/22

VICTORIA QUAYE **PETITIONER**

VRS

DANIEL QUAYE **RESPONDENT**

PARTIES: PRESENT AND SELF REPRESENTED.

JUDGMENT

The petitioner filed a petition for divorce in the Registry of this court on 15th September, 2022 against the respondent for the following reliefs:

a. Dissolution of the marriage between the parties as having broken down beyond reconciliation.
b. Any other order the court may deem fit and just,

The respondent filed an answer to the petition on 7th October 2022 and cross petitioned for the dissolution of the marriage.

On 11th October 2022, parties were referred to the Court Connected ADR for a possible reconciliation however on 25th October 2022 parties reached an agreement on the ancillary reliefs.

At the close of pleadings, the court set down the issue of whether or not the parties' marriage has broken down beyond reconciliation for determination.

CASE OF THE PETITIONER

It is the case of the Petitioner that parties got married on 17th August 1996 at Accra Metropolitan Assembly in the Greater Accra Region of the Republic of Ghana. She tendered the marriage certificate with licence number A.M.A 2337/96 in evidence and same was admitted and marked as Exhibit A.

After the marriage parties cohabited at Gbawe Top Base and have three issues of the marriage namely Prince Quaye aged 26 years, John Quaye aged 22 years and Driscilla Quaye aged 15 years.

It is the further case of the petitioner that the respondent asked her to leave the matrimonial home in the year 2011 and to date parties have been separated. According to her, respondent is now living with another woman and they have two children. She added that communication between the parties has broken down and all attempts at reconciliation by friends and family have proved futile as parties have irreconcilable differences.

She prayed the court to grant her reliefs.

RESPONDENT'S CASE IN ANSWER

It is the case of the respondent that petitioner had a habit of leaving the matrimonial home with the pretext of going somewhere. One Saturday night, petitioner left the matrimonial home under the pretext of going to study at a Montessori School at Nima. When respondent followed up to the school, he found out that the petitioner was not at the school and all efforts to reach her on her phone proved futile.

Respondent admits that he is living with another woman and has two children with her due to petitioner's absence from the matrimonial home.

According to respondent, the marriage between the parties has broken down beyond reconciliation and all attempts at reconciliation has failed.

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of Ackah v Pergah Transport Ltd [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail."

This position of the law was re-echoed by Benin JSC in the case of Aryee v Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] 1 SCGLR 721 at page 733 as follows;

"It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved."

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey [2003-2004] SCGLR 420, it was held as follows;

"It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

THE COURT'S ANALYSIS AND OPINION

Issue : whether or not the marriage between the parties has broken down beyond reconciliation.

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains that for the purpose of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the court of one or more of the following facts:

(a) That the Respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the Respondent

(b) That the Respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent

(c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition

(d) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce provided that the consent shall not be unreasonably withheld and where the court is satisfied that it has been withheld the court may grant a petition for divorce under this paragraph despite the refusal

(e) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition

(f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that although the court finds the existence of one or more of the facts specified in subsection (1), the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202,** thus;

"The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved."

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent and the fact that he had committed adultery.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At page 123 of the book, "At a glance! The Marriages Act and the Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour stated;

"Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger". The above statement reiterated the position of the law in **GOLLINS V GOLLINS [1964] A.C 644**

She added that the principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

From the evidence, apart from the bare assertions of the petitioner, no shred of evidence was led by the petitioner to prove unreasonable conduct on the part of the respondent.

She also accused him of adultery.

Section 43 of the Matrimonial Causes Act supra defines adultery as follows;

"adultery" means the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse;"

To succeed under this fact, the petitioner must first prove adultery on the part of the respondent and also that she finds it intolerable to live with him by reason of his adultery.

At page 119 of Frederica Ahwireng Obeng's book cited supra on adultery the learned writer stated;

"because it is difficult to catch offenders in the act, adultery may also be inferred from circumstantial evidence. The circumstantial evidence must be strong for the courts to infer adultery."

In **ADJETEY AND ANOTHER V ADJETEY [1973] 1 GLR 216-221**, Sarkodee J delivered himself as follows;

"Direct evidence of adultery is rare. In nearly every case, the fact of adultery is inferred from circumstances which by fair and necessary inference led to that conclusion. There must be proof of disposition and opportunity for committing adultery but the conjunction of strong inclination with evidence of opportunity does not lead to an irrebuttable presumption that adultery has been committed and likewise the court is not bound to infer adultery from opportunity alone."

At paragraph 7 of respondent's answer to the petition, he admitted that he lives with another woman and has two children with her.

In the case of In Re Asere Stool; Nikoi Olai Amontia IV (substituted by Tafo Amon II) v Akotia Oworsika III (Substituted by Laryea Ayiku III) [2005-2006] SCGLR 637, the Supreme Court held as follows;

"Where your adversary has admitted a fact advantageous to your cause, what better evidence do you need to establish that fact than relying on his own admission?"

I therefore find in the light of Respondent's admission of adultery coupled with the fact that parties have not lived together as man and wife since 2011 as borne out by the evidence that the parties' marriage has indeed broken down beyond reconciliation.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Victoria Quaye and Daniel Quaye celebrated at the Open Door Assemblies of God Church on 17th August, 1996 is dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

From the evidence, the third issue Driscilla Quaye aged 15 years has been living with the respondent since the separation of the parties in 2011 and accordingly custody of Driscilla Quaye is granted to the respondent with reasonable access to the petitioner for continuity in her care and control.

The other issues of the marriage have reached the ages of majority and are therefore free to live with any of the parties.

The terms of agreement of the parties dated 25th October 2022 is adopted as consent judgment and made a part of the final judgment of this court.

Parties are to bear their own legal costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)